

July 15, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON APPEAL FROM NOTICE AND ORDER.

SUBJECT: Department of Development and Environmental Services File No. **E9800198**

JEFF HANSEN
Code Enforcement Appeal

Location: 33230 – 353rd Avenue SE

Appellant: Jeff Hansen
33607 SE 209th Street
Palmer, WA 98022

Represented by:
Stephen L. Freeborn
Attorney At Law
14401 Issaquah-Hobart Road
Issaquah, WA 98027

Intervenors: Steve Johnson & Ray Miller
34920 Lake Umek Road 33310 - 353rd Avenue SE
Palmer, WA 98051 Palmer, WA 98051

Represented by:
William Snell
Attorney At Law
1111 Third Avenue #2220
Seattle, WA 98101

SUMMARY OF RECOMMENDATIONS & DECISION:

Department's Preliminary:	Deny appeal
Department's Final:	Deny appeal
Examiner:	Deny appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:	June 2, 1998
Statement of appeal received by Examiner:	June 2, 1998

EXAMINER PROCEEDINGS:

Hearing Opened: June 30, 1998

Hearing Closed: June 30, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Clearing and grading
- Code interpretation
- Code violation (non-permitted uses)
- Compatibility of uses
- Noise
- Signs

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Notice and Order.** On April 8, 1998, the Department of Development and Environmental Services issued a Notice of King County Code Violation, Civil Penalty Order, and Abatement Order upon Jeffrey S. Hansen. The Notice and Order cited Mr. Hansen with the following code violation:

Operation of a motor cross race tracks [sic] which are open to the public, in a forestry zone.

To bring this property into compliance, the Department ordered Mr. Hansen to:

Cease operation of the motor cross race tracks.

2. **Appeal.** On April 22, 1998, Mr. Hansen filed timely appeal through his attorney. His appeal is based generally on the following propositions:
 - A. The Appellant argues that the activity occurring on the subject property is not "racing" and that there is no "race track" on the property. From the Appellant's perspective, racing and race tracks require a starting point, finishing point, and/or (probably) some timing of participant activities. These motorcyclists, he argues, are merely "riding".
 - B. Mr. Hansen also contends that much of the activity promoting motorcycle usage of the subject property has been activity undertaken not by Mr. Hansen, but rather by "friends" and other persons unknown.

- C. Appellant Hansen states further that he did not charge anyone to ride a motorcycle on the property.
 - D. Finally, the Appellant observes -- and the Department agrees -- that motorcycle operation on the subject property has been only occasional since service of the April 8, 1998 Notice and Order.
3. **Intervention.** Steve Johnson and Ray Miller, owners of properties adjacent to the Appellant's property, intervene to support the Notice and Order and "to preserve the rural residential character of the Forest zoned property". Mr. Miller apparently filed the initial complaint which resulted in the presently-appealed code enforcement action. The Intervenor's argue that the motorcycle activities on the subject property directly and adversely affect their own properties -- particularly regarding noise, traffic, wildlife and the environment. In this Report, the testimony and evidence offered by the Intervenor's is weighed together with the evidence and testimony offered by the Department and the Appellant.
4. **Findings.** The following facts are relevant:
- A. **Race.** Although the verb "race" can refer to a contest of speed, it can also mean merely "to move rapidly". In fact, an engine that is "racing" need not move anywhere.
 - B. **Racetrack.** A racetrack may be a course laid out for racing.
 - C. **Motocross.** (Abbreviated "MX"). A cross country motorcycle race over a closed course of rough terrain with steep hills and sharp curves may be referred to by the noun "motocross".
 - D. **Signage.** Lake Umek Road extends southeasterly from the Cumberland-Kanaskat Road approximately one and a half miles until it becomes a private gravel road extending approximately another half mile (as 353rd Avenue SE, according to Exhibit No. 17) to reach the subject property. Along that route there are at least eight paint-stenciled signs saying "MXH" that lead to the site. "MXH" means "Motocross Heaven" according to Exhibit No. 14, or "Motocross Hansen", according to the Appellant. The Appellant further suggests that perhaps someone else posted the signs.
 - E. **Flyers.** The hearing record contains a copy of a flyer which advertises motocross activity on the subject property, calling it "Motocross Heaven" and describing it as a "20-acre riding paradise featuring supercross and outdoor motocross tracks. It advises the reader to "follow the signs" to "MXH". Further, it describes the Appellant's phone number as the "Hot Line" which one may call. On Green River Country Inn Restaurant and Lounge letterhead, the back side of the flyer provides a map to "MXH". The Appellant owns the Green River Country Inn and has recently changed the name to "The Edge" as a tie-in to motocross and "extreme" sports.

The Appellant testifies that the flyer was designed as a joke, satirizing a California cult. He testifies that distribution of the flyer was never intended. Copies of the flyer have been seen posted at a nearby grocery store and at the

restaurant/bar owned by the Appellant. According to the Department's report, flyers were distributed at the last supercross event held at the subject property. However, corroborating testimony was not provided. Mr. Hansen denies that he holds "events". In mid-April, Appellant Hansen advised Code Enforcement Office Elizabeth Deraitus that he had made 20 of the flyers.

- F. **Map.** In addition to the map on the flyer, another larger map has been posted in the bar at the Appellant's place of business. According to testimony, a map may also be obtained from the person attending the bar.
- G. **Classified Ad.** The subject property was advertised by Rare Earth Real Estate in a classified newspaper ad as "contoured for dirt bikes". The Appellant and his realtor testify that this language was used by mistake and that Mr. Hansen advised his realtor not to use that terminology when advertising the property.
- H. **Contouring.** The Appellant testifies, contrary to the language reported in language 5.G, above, that the property is not contoured for motocross or ATV activity. Instead, the Appellant testifies, two home sites have been graded on the property.
- I. **Home sites.** The two alleged "home sites" on the property have not been developed pursuant to any permit. One mobile home is already located on the property. King County regulation permits only one residence on any given single parcel or lot. Although it is unclear whether the mobile home is presently occupied, the Appellant testifies that it has been occupied during much of the history of File E9800198. No short subdivision application has been filed. Further, in the "F" (Forestry) Zone, the minimum lot area is 80 acres (KCC 21A.12.040.A.) In other words, an existing 20-acre ownership cannot be further subdivided for residential development purposes. In other words, home sites in addition to the existing mobile home on the subject property are prohibited by zoning law.
- J. **Waivers.** In mid-April Appellant Hansen stated to Code Enforcement Officer Elizabeth Deraitus that he has people sign injury waivers pursuant to the advice of his attorney. However, in testimony, Mr. Hansen denies that, contending that only a sign-up sheet was requested. As an example, he provides Exhibit No. 28, a list of names all written in the same handwriting.
- K. **Fee to Ride.** A neighboring property owner (Maisenhelder) testifies that he was told by Appellant Hansen that it cost \$10 per day to ride the course. Appellant Hansen denies that. Or, in the alternative, his attorney suggests that perhaps the fee was intended to discourage riding on the property.
- L. **Permitted Use.** In the King County Zoning Code, KCC Title 21A, permitted use regulation is based upon the "Standard Industrial Classification Manual." The SIC Manual makes clear that "**racing**" includes not merely "**racing**" but also "**track operation**". SIC No. 7948 is called "Racetrack" by KCC 21A.08.100, which authorizes the use pursuant to a special permit in several zones, but not in agriculture, forest, or mineral zoning classifications. KCC 21A.08.020.B indicates that "if no symbol appears in the box at the intersection of the column and the row, [in the Permitted Use Matrix], the use is not allowed in that

district,..." That is precisely the case with respect to "race track" in Permitted Use Matrix KCC 21A.08.100.A.

5. Except as noted above, the facts and analysis contained in the Department of Development and Environmental Services Preliminary Report dated June 30, 1998 are correct and are incorporated here by reference.

CONCLUSIONS:

1. The fact pattern in this case is frustrating. A graded track used by motorcycles in a video of the site is called a "home site" (even though additional home sites on this property in this zone are not allowed). "Someone else" posted a flyer or flyers indicating the use of the subject property. "Someone else" posted signs. Waivers were required to be signed, but then again, were not required to be signed. A fee of \$10 is charged, but was not charged. And so on. Given the consistent corroboration among Intervenor and Department witnesses, the testimony of the Appellant must be assigned diminished credibility.
2. A "racetrack" as identified in SIC No. 7948 **"includes track operation"**. Regardless of whether one calls it "racing" or "riding", it is **track operation** nonetheless. Home site or not, it is being used as a track which is operated as a facility for all terrain vehicles and offroad motorcycles to ride. If we focus upon the word "race", the Department's position must prevail. "Racing", within the standard dictionary definition of the term, need not include timed event, starting lines or finish lines. It just means these motorcycles are moving around at a rapid rate, considering the terrain. In fact, it doesn't matter whether or not they are racing, regardless of how one defines or identifies racing activity. It doesn't matter because the SIC No. 7948 term "racetrack" **includes "track operation"**. The evidence in this hearing record shows clearly enough that, regardless of whether one calls the activity home site preparation, open house weekend, or a "few friends riding", it nonetheless constitutes "track operation". See particularly Exhibit No. 24.

DECISION:

The appeal is DENIED.

ORDER:

Jeffrey S. Hansen shall CEASE OPERATION of the motocross racetracks on the subject property. One motorcycle, ridden by the property owner himself, will not violate this Order. Any other riders or any more riders will certainly constitute a failure to comply with this Order and will subject Jeffrey S. Hansen to civil penalty, abatement and misdemeanor actions as stated in the Department's April 8, 1998 Notice and Order. Nothing in this order shall be construed as limiting the prosecution authority of the County.

ORDERED this 15th day of July, 1998.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 15th day of July, 1998, to the parties and interested persons shown on the attached list.

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINUTES OF THE JUNE 30, 1998 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9800198 – HANSEN:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Elizabeth Deraitus, William Snell, Stephen Freeborn, Jeff Hansen, Ray Miller, Bernie McKinney, Steve Johnson, and William Maisenhelder.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the June 30, 1998 public hearing
- Exhibit No. 2 Copy of Notice and Order issued April 8, 1998
- Exhibit No. 3 Copy of Appeal received April 22, 1998
- Exhibit No. 4 Copy of Party of Record List
- Exhibit No. 5 Copy of KCC 21A.08.100A Regional Land Uses
- Exhibit No. 6 Copy of Standard Industrial Classification (SIC) Manual Industry Number 7948
- Exhibit No. 7 Copy of Webster's New Collegiate Dictionary, Copyright 1973 Definition of Motocross
- Exhibit No. 8 Copy of Webster's II New Riverside University Dictionary, Copyright 1988 Definition of Motocross
- Exhibit No. 9 Copy of The Wordsmyth English Dictionary – Thesaurus Definition of Motocross
- Exhibit No. 10 Copy of Internet Dictionary Search Definition of Motocross
- Exhibit No. 11 Copy of WWWebster Dictionary Definition of Motocross
- Exhibit No. 12 Copy of April 5, 1998 letter to Code Enforcement from Attorney Rick Bathum
- Exhibit No. 13 Copy of Notice of Satisfaction dated April 14, 1998 to remove Charles & Marian Brown from this enforcement action
- Exhibit No. 14 Copy of flyer advertising Motocross Heaven
- Exhibit No. 15 Copy of Local Information for Parcel 142107-9013
- Exhibit No. 16 Copy of GIS parcel location map
- Exhibit No. 17 Copy of Thomas Page Map location
- Exhibit No. 18 Copy of Situs File Information property characteristics
- Exhibit No. 19 Copy of Situs File Special Limitations
- Exhibit No. 20 Copy of Dept. of Assessments Legal Description
- Exhibit No. 21 Copy of Dept. of Assessments Tax Information
- Exhibit No. 22 Copy of Forest Practice Permit Record including Activity Map (6 pages)
- Exhibit No. 23 Copy of letter dated March 7, 1998 to Code Enforcement from Raymond Miller
- Exhibit No. 24 Videotape submitted to Code Enforcement from Raymond Miller
- Exhibit No. 25 Copy of Notice of Hearing
- Exhibit No. 26 Copy of Vicinity Map
- Exhibit No. 27 Copy of Assessor's Map
- Exhibit No. 28 Jeff Hansen's List of Witnesses
- Exhibit No. 29 Motion to Intervene by William Snell
- Exhibit No. 30 Letter dated June 22, 1998 from Raymond Miller
- Exhibit No. 31 Newspaper classified ad for property
- Exhibit No. 32 Two polaroid photos showing sign "The Edge" and sign "MXH"
- Exhibit No. 33 Affidavit of Darrel Clark
- Exhibit No. 34 Affidavit of Jared Pratt
- Exhibit No. 35 Petition by neighbors in opposition to motocross activity

RST:gb

Attachment

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